to a mere allegation that the accused has committed some other offence, of which there is no evidence whatever, and secondly, that in assessing sentence all the circumstances of the offence proved should be considered.

I greatly dislike altering sentences passed by Magistrates especially in cases of this kind which constantly come before them and very rarely before me for which reason they are in a far better position to judge the surrounding circumstances. In this case, however, I am clearly of opinion that the learned Magistrate misdirected himself on a point of law and therefore the fine was assessed, in part, on a wrong principle. If he had not been influenced by the case of *Chiah Boon Hean*[1], I gravely doubt whether he would have made the fine so large, particularly as he expressly found that the woman in this case was only a pawn. Also in another appeal set down (but not heard) on the same day, a different Magistrate had imposed a fine of $1,000.00 in a distinctly more serious case under the same section. I felt therefore that a substantial alteration in this case was necessary and I reduced the fine to $300.00.

I would add that it is very doubtful whether the principle of one-third of the maximum imprisonment was ever generally applied in the Supreme Court; it is more probable that some qualified observation has been distorted by lack of context. However that may be, I can and do most emphatically state from my own experience as Counsel and Judge in this country during many years that the practice of the Supreme Court is quite different and the case mentioned is not now an authority for the so called "one-third rule".

It is impossible to lay down rules for fixing sentences. There are certain factors such as prevalence, difficulty of detection and injury to the public revenue which operate in the direction of severity and others such as leniency to first offenders which operate in the other direction and where, as frequently happens, a number of these factors apply in one case, the Court must balance them as best as it can.

The sentence ought to be an individual one, personal to the prisoner himself, assessed with regard to his moral and financial circumstances as well as to the nature of his offence. It is sometimes necessary to distinguish between two persons who have jointly committed a single offence.

It is desirable that there should be at the back of the mind of the Court something in the nature of a pattern of normal fines for prevalent offences because without this there would be undue disparity in the sentences for more or less similar offences but this pattern should never crystallize into anything approaching a scale or tariff. It is often difficult to decide which of the conflicting factors should prevail but there are two which must be considered in every case — the gravity of the offence and the means of the accused. If authority is desired for this proposition it will be found in Magna Carta.

Fine Reduced.

REX v. LIM KANG CHUI.

[App. Crim. Juris. (Murray-Aynsley, C.J., Evans and Gordon-Smith, JJ.) July 14, 1949]

[Singapore — Special Case No. 6 of 1948]

Criminal Trial — Use of plans in criminal cases.

The question referred to the Court in this case had reference to the use of plans in criminal cases.

Held, (1) that a plan produced in evidence should only show features that are visible to the person making the plan and he should not put in additional features from hearsay as for example the position of a vehicle not in situ or where witnesses are alleged to have been standing; (2) that a key is unobjectionable if it assists identification of features properly on the plan but should not contain anything in addition.

SPECIAL CASE.

A. D. Farrell for the Crown.

Wee Chong Jin — Amicus Curiae.

Cur. Adv. Vult.

The judgment of the Court of Appeal was read by :—

Murray-Aynsley, C. J. : — This case was referred to the Court by Mr. Forrer the Fourth District Judge. The point was academic in the sense that the Court was of opinion that whatever view the Court took of the question referred to it, there was no question but that there was in any case ample evidence on which the accused person, Lim Kang Chui, could be convicted and that the conviction ought to stand.

The question referred to the Court had reference to the use of plans in criminal cases.

There was at the hearing no difference in the views of counsel and as a result there was no argument. We consider that it is advisable to give some direction for the guidance of Courts in the Colony in future.

A plan produced as evidence should only show features that are visible to the person making the plan. He should not put in additional features from hearsay.

To give an example. After a motor-car accident the plan would show, besides the permanent features, the vehicle or vehicles if still *in situ* and any other features still apparent, such as wheel marks, etc.

On the other hand, he should not add such things as the position of a vehicle not *in situ* or where witnesses are alleged to have been standing.

A key is unobjectionable if it assists identification of features properly on the plan. It should not contain anything in addition.

It is realised that many witnesses cannot point out anything on a plan unless the point to be pointed has been previously marked with some letter or other mark. It is considered that the addition of such marks has all the objectionable characteristics of leading questions and that identification obtained with such assistance has no value as evidence.

Ruled Accordingly.

SINO-BRITISH ENGINEERING CORPORATION (Malaya) LTD. v. M. A. NAMAZIE LTD.

[Court of Appeal (Evans, Brown and Gordon-Smith, JJ.)
August 11, 1949]

[Singapore — Civil Appeal No. 13 of 1949]

This was an appeal from the judgment of the learned Chief Justice on a claim in contract brought by the appellants against the respondents. The question at issue was as to the proper construction of a paragraph of the appellants' letter to the respondents, which was confirmed by the respondents: "In the event of Bangkok not being interested we will sell locally or elsewhere and in the unlikely event of the lot not being disposed of by the time your next shipment arrives about a couple of months later, you will agree to take it over from us at landed cost." It was argued for the appellants (1) that there was an implied term that the respondents were under an obligation to do nothing to prevent the arrival of their next shipment about a couple of months later upon which the appellants' right depended and (2) that the arrival of the next shipment was a condition precedent to the appellants' right to have the cement taken back, and that although there may have been no obligation on the part of the respondents to see that the condition was fulfilled there was an obligation on them to see that the appellants were not damnified if the condition was not fulfilled.

Held, (1) that no term can be implied which is not necessary to the express contract and would manifestly have been assented to if propounded; (2) that in this case no such term, as contended for by the appellants, could be read into or implied from the contract and therefore the appeal must be dismissed.

Cases referred to:—

(1) *Tancred Arroll v. Steel Company of Scotland* (1890) 15 A.C. 125.
(2) *In re Harrison & Micks Lambert Co.* (1917) 1 K.B. 755.
(3) *Hotham v. East India Company* (1787) 99 E.R. 1295.
(4) *Mackay v. Dick* (1881) 6 A.C. 251.
(5) *Kleinert v. Abosso* (1913) 58 S.J. 45.
(6) *Colley v. Overseas Exporters* (1921) 3 K.B.D. 302.
(7) *Dodd v. Churton* (1897) 1 Q.B. 562.
(8) *MacKay v. Dick* (1881) 6 A.C. 251 at p. 263.

CIVIL APPEAL.

Dr. C. H. Withers-Payne for the Appellants.

Sir Roland Braddell (*R. H. Green* with him) for the Respondents.

Evans, J. : — This is an appeal from a judgment of the learned Chief Justice on a claim in contract brought by the appellants against the defendants. That claim was based on an agreement alleged to be contained in a written contract of 16th April 1946 and a letter from the plaintiffs to the defendants of 17th April which letter is said to be confirmed by the defendants on 20th April. This letter is noted "We confirm M. A. Namazie Limited M. J. Namazie Director." A letter of 18th April from the defendants to plaintiffs in answer to that of 17th was also put in evidence.

The contract is one for the sale by the defendants to the plaintiffs of 1,200 tons of Indian cement, and the letter contains terms attached to that contract. The goods under the contract were duly delivered and accepted by the plaintiffs.

The Chief Justice held that the case depended on the construction of one paragraph of the letter. That paragraph reads as follows:—

> In event of Bangkok not being interested we will sell locally or elsewhere and in the very unlikely event of the lot not being disposed of by the time your next shipment arrives about a couple of months later, you will agree to take it over from us at landed cost.

The Chief Justice held, and the facts are not disputed, that "The plaintiffs did not succeed in disposing of a large quantity of the cement at the contract price and ultimately had to dispose of the balance at a considerable loss. The defendants refused to buy back the cement when called upon to do so. No subsequent shipment of Indian cement was received by the defendants, though they did receive shipments of other goods. The question at issue is whether the defendants were under an obligation to buy back the cement.